

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2007-1292-AIR-E TCEQ ID: RN102496130 CASE NO.: 34399**  
**RESPONDENT NAME: Viridis Energy (Texas), LP**

Page 1 of 2

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input checked="" type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

**SITE WHERE VIOLATION(S) OCCURRED:** Viridis Energy Coastal Plains LFGTE Facility, approximately 1.4 miles north of State Highway 6 and 2.3 miles east of State Highway 35 near the boundary of Brazoria and Galveston counties, Galveston County

**TYPE OF OPERATION:** Landfill that converts waste into electricity

**SMALL BUSINESS:** ☐ Yes ☒ No

**OTHER SIGNIFICANT MATTERS:** There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

**INTERESTED PARTIES:** No one other than the ED and the Respondent has expressed an interest in this matter.

**COMMENTS RECEIVED:** The *Texas Register* comment period expired on January 28, 2008. No comments were received.

**CONTACTS AND MAILING LIST:**  
**TCEQ Attorney/SEP Coordinator:** None  
**TCEQ Enforcement Coordinator:** Ms. Roshondra Lowe, Enforcement Division, Enforcement Team 5, MC R-12, (713) 767-3553;  
 Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171  
**Respondent:** Mr. Luong Nguyen, Vice President, Viridis Energy (Texas), LP, 7500 San Felipe, Suite 600, Houston, Texas 77063  
**Respondent's Attorney:** Not represented by counsel on this enforcement matter

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> June 5, 2007</p> <p><b>Date of NOV/NOE Relating to this Case:</b> July 17, 2007 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation.</p> <p><b>AIR</b></p> <p>1) Failure to install totalizing fuel flow meters with an accuracy of <math>\pm 5\%</math> on four internal combustion engines to individually and continuously measure the gas and liquid fuel usage in order to demonstrate continuous compliance with the control requirements for nitrogen oxides ("NOx") in the Houston-Galveston-Brazoria Ozone Nonattainment Area [30 TEX. ADMIN. CODE §§ 117.340(a) and 117.9020(2)(A)(i) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p> <p>2) Failure to report deviations regarding fuel flow meters on internal combustion engines, which should have been included in the deviation report for the period ending September 6, 2005 [30 TEX. ADMIN. CODE § 122.145(2)(A), TEX. HEALTH &amp; SAFETY CODE § 382.085(b), and Air Permit No. 02538, General Conditions].</p>	<p><b>Total Assessed:</b> \$4,387</p> <p><b>Total Deferred:</b> \$877  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$3,510</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that the Respondent reported the deviation regarding fuel flow meters on internal combustion engines in the deviation report dated March 27, 2007.</p> <p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to:</p> <p>a. Within 270 days after the effective date of this Agreed Order, achieve compliance with the continuous demonstration of compliance requirements for combustion control at major industrial, commercial, and institutional sources in the Houston-Galveston-Brazoria Ozone Nonattainment area; and</p> <p>b. Within 285 days after the effective date of this Agreed Order, submit written certification demonstrating compliance with Ordering Provision a.</p>

Additional ID No(s): GB0568G



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 26, 2007

<b>DATES</b>	<b>Assigned</b>	23-Jul-2007	<b>Screening</b>	9-Aug-2007	<b>EPA Due</b>	
	<b>PCW</b>	27-Nov-2007				

<b>RESPONDENT/FACILITY INFORMATION</b>			
<b>Respondent</b>	Viridis Energy (Texas), LP		
<b>Reg. Ent. Ref. No.</b>	RN102496130		
<b>Facility/Site Region</b>	12-Houston	<b>Major/Minor Source</b>	Major

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	34399	<b>No. of Violations</b>	2
<b>Docket No.</b>	2007-1292-AIR-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Air	<b>Enf. Coordinator</b>	Roshondra Lowe
<b>Multi-Media</b>		<b>EC's Team</b>	EnforcementTeam 5
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** **\$4,100**

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

**Compliance History** **7% Enhancement** **Subtotals 2, 3, & 7** **\$287**

**Notes** Penalty enhanced due to one NOV for a similar violation and one other NOV.

**Culpability** **No** **0% Enhancement** **Subtotal 4** **\$0**

**Notes** The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply** **0% Reduction** **Subtotal 5** **\$0**

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

**Notes** The Respondent does not meet the good faith criteria.

**0% Enhancement\*** **Subtotal 6** **\$0**  
 \*Capped at the Total EB \$ Amount

Total EB Amounts	\$411
Approx. Cost of Compliance	\$6,500

**SUM OF SUBTOTALS 1-7** **Final Subtotal** **\$4,387**

**OTHER FACTORS AS JUSTICE MAY REQUIRE** **Adjustment** **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

**Notes**

**Final Penalty Amount** **\$4,387**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** **\$4,387**

**DEFERRAL** **20% Reduction** **Adjustment** **-\$877**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

**Notes**

Deferral offered for expedited settlement.

**PAYABLE PENALTY** **\$3,510**

Screening Date 9-Aug-2007

Docket No. 2007-1292-AIR-E

PCW

Respondent Viridis Energy (Texas), LP

Policy Revision 2 (September 2002)

Case ID No. 34399

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN102496130

Media [Statute] Air

Enf. Coordinator Roshondra Lowe

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 7%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

Penalty enhanced due to one NOV for a similar violation and one other NOV.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 7%

<b>Screening Date</b> 9-Aug-2007	<b>Docket No.</b> 2007-1292-AIR-E	<b>PCW</b>
<b>Respondent</b> Viridis Energy (Texas), LP	<small>Policy Revision 2 (September 2002)</small>	
<b>Case ID No.</b> 34399	<small>PCW Revision June 26, 2007</small>	
<b>Reg. Ent. Reference No.</b> RN102496130		
<b>Media [Statute]</b> Air		
<b>Enf. Coordinator</b> Roshondra Lowe		
<b>Violation Number</b> <input type="text" value="1"/>		
<b>Rule Cite(s)</b>	30 Tex. Admin. Code §§ 117.340(a) and 117.9020(2)(A)(i) and Tex. Health & Safety Code § 382.085(b)	
<b>Violation Description</b>	Failed to install totalizing fuel flow meters with an accuracy of ±5% on four internal combustion engines to individually and continuously measure the gas and liquid fuel usage in order to demonstrate continuous compliance with the control requirements for nitrogen oxides ("NOx") in the Houston-Galveston-Brazoria Ozone Nonattainment Area.	
<b>Base Penalty</b>		<input type="text" value="\$10,000"/>

**>> Environmental, Property and Human Health Matrix**

OR	<b>Harm</b>					
	<b>Release</b>	Major	Moderate	Minor		
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>		
	Potential	<input type="text"/>	<input type="text"/>	x	<b>Percent</b>	<input type="text" value="10%"/>

**>> Programmatic Matrix**

<b>Falsification</b>					
Major	Moderate	Minor			
<input type="text"/>	<input type="text"/>	<input type="text"/>			
				<b>Percent</b>	<input type="text" value="0%"/>

**Matrix Notes**

Human health or the environment could be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

**Adjustment**

**Violation Events**

Number of Violation Events	<input type="text" value="4"/>		<input type="text" value="755"/> Number of violation days	
----------------------------	--------------------------------	--	---	--

mark only one with an x	daily	<input type="text"/>	
	monthly	<input type="text"/>	
	quarterly	<input type="text"/>	
	semiannual	<input type="text"/>	
	annual	<input type="text"/>	
	single event	x	

Four single events are recommended (one per engine).

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
<b>Estimated EB Amount</b> <input type="text" value="\$301"/>	<b>Violation Final Penalty Total</b> <input type="text" value="\$4,280"/>
<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$4,280"/>	

**Economic Benefit Worksheet**

Respondent Viridis Energy (Texas), LP  
Case ID No. 34399  
Reg. Ent. Reference No. RN102496130  
Media Air  
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

**Delayed Costs**

Equipment	\$5,000	5-Jun-2007	14-Apr-2008	0.9	\$14	\$287	\$301
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost designed to ensure that individual fuel flow-meters are installed on all combustion engines. Date required is based on the investigation date. Final date is based on the projected compliance date.

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$5,000

TOTAL

\$301

Screening Date 9-Aug-2007

Docket No. 2007-1292-AIR-E

PCW

Respondent Viridis Energy (Texas), LP

Policy Revision 2 (September 2002)

Case ID No. 34399

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN102496130

Media [Statute] Air

Enf. Coordinator Roshondra Lowe

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 122.145(2)(A), Tex. Health &amp; Safety Code § 382.085(b), and Air Permit No. 02538, General Conditions

Violation Description Failed to report deviations regarding fuel flow meters on internal combustion engines, which should have been included in the deviation report for the period ending September 6, 2005.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

	Harm		
Release	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor
			x

Percent 1%

Matrix Notes

Less than 30 percent of the rule was not met.

Adjustment \$9,900

\$100

## Violation Events

Number of Violation Events 1

537 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$100

One single event is recommended.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$110

Violation Final Penalty Total \$107

This violation Final Assessed Penalty (adjusted for limits) \$107



## Economic Benefit Worksheet

**Respondent** Viridis Energy (Texas), LP  
**Case ID No.** 34399  
**Reg. Ent. Reference No.** RN102496130  
**Media** Air  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

### Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$1,500	6-Oct-2005	27-Mar-2007	1.5	\$110	n/a	\$110

Notes for DELAYED costs

Estimated cost designed to ensure that all instances of deviations are reported in a timely manner. Date required is based on the due date of the deviation report. Final date is based on the date of corrective action documentation.

### Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,500

TOTAL

\$110



## Compliance History

Customer/Respondent/Owner-Operator:	CN601281835	Viridis Energy (Texas), LP	Classification: AVERAGE	Rating: 1.80																					
Regulated Entity:	RN102496130	VIRIDIS ENERGY COASTAL PLAINS LFGTE FACILITY	Classification: AVERAGE	Site Rating: 0.50																					
ID Number(s):	<table border="0" style="width: 100%;"> <tr> <td style="width: 30%;">AIR NEW SOURCE PERMITS</td> <td style="width: 30%;">ACCOUNT NUMBER</td> <td style="width: 40%;">GB0568G</td> </tr> <tr> <td>AIR NEW SOURCE PERMITS</td> <td>PERMIT</td> <td>44277</td> </tr> <tr> <td>AIR NEW SOURCE PERMITS</td> <td>PERMIT</td> <td>N031</td> </tr> <tr> <td>AIR NEW SOURCE PERMITS</td> <td>EPA ID</td> <td>PSDTX972</td> </tr> <tr> <td>AIR NEW SOURCE PERMITS</td> <td>AFS NUM</td> <td>4816700132</td> </tr> <tr> <td>AIR OPERATING PERMITS</td> <td>ACCOUNT NUMBER</td> <td>GB0568G</td> </tr> <tr> <td>AIR OPERATING PERMITS</td> <td>PERMIT</td> <td>2538</td> </tr> </table>				AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	GB0568G	AIR NEW SOURCE PERMITS	PERMIT	44277	AIR NEW SOURCE PERMITS	PERMIT	N031	AIR NEW SOURCE PERMITS	EPA ID	PSDTX972	AIR NEW SOURCE PERMITS	AFS NUM	4816700132	AIR OPERATING PERMITS	ACCOUNT NUMBER	GB0568G	AIR OPERATING PERMITS	PERMIT	2538
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AIR OPERATING PERMITS	ACCOUNT NUMBER	GB0568G																							
AIR OPERATING PERMITS	PERMIT	2538																							
Location:	APPROX 1.4 MI N OF SH 6 & 2.3 MI E OF SH 35 NEAR THE BOUNDARY OF BRAZORIA & GALVESTON CO		Rating Date: September 01 06 Repeat Violator: NO																						
TCEQ Region:	REGION 12 - HOUSTON																								
Date Compliance History Prepared:	August 17, 2007																								
Agency Decision Requiring Compliance History:	Enforcement																								
Compliance Period:	August 17, 2002 to August 17, 2007																								
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History																									
Name:	Roshondra Lowe	Phone:	(713) 767-3553																						

### Site Compliance History Components

- |  |   |
|--|---|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes   |
| 2. Has there been a (known) change in ownership of the site during the compliance period?    | Yes   |
| 3. If Yes, who is the current owner?   | <u>Viridis Energy (Texas), LP</u>               |
| 4. If Yes, who was/were the prior owner(s)?  | Reliant Energy Renewables Coastal<br>Plains, LP |
| 5. When did the change(s) in ownership occur?  | 4/28/2005<br>07/15/2005                         |

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

- B. Any criminal convictions of the state of Texas and the federal government.

N/A

- C. Chronic excessive emissions events.

N/A

- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1 08/29/2006 (479883)

N/A

2 07/18/2007 (556798)

- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 08/29/2006 (479883)

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)  
30 TAC Chapter 122, SubChapter B 122.143(4)  
5C THC Chapter 382, SubChapter A 382.085(b)

Rqmt Prov: PERMIT NSR# 44277, SC 7  
OP O-2538, SC 6

Description: Failure to check the portable analyzer for accuracy prior to and following the  
measurements by using an audit gas that conforms to the specifications in 40 CFR Part  
60, Appendix F, 5.1.2(3)

Date: 07/17/2007 (566858)

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 122, SubChapter B 122.146(2)  
5C THC Chapter 382, SubChapter D 382.085(b)

Rqmt Prov: OP FOP O-02538 GC

Description: Failure to submit PCC Report within 30 days of Certification Period.  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 122, SubChapter B 122.145(2)(A)  
5C THC Chapter 382, SubChapter D 382.085(b)  
Rqmt Prov: OP FOP O-02538 GC  
Description: Failure to report deviations on Deviation Reports.

- F. Environmental audits.  
N/A
- G. Type of environmental management systems (EMSs).  
N/A
- H. Voluntary on-site compliance assessment dates.  
N/A
- I. Participation in a voluntary pollution reduction program.  
N/A
- J. Early compliance.  
N/A
- Sites Outside of Texas  
N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
VIRIDIS ENERGY (TEXAS), LP  
RN102496130**

**§        BEFORE THE  
§  
§        TEXAS COMMISSION ON  
§  
§        ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2007-1292-AIR-E**

### **I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Viridis Energy (Texas), LP ("Viridis") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and Viridis appear before the Commission and together stipulate that:

1. Viridis owns and operates a landfill that converts waste into electricity located approximately 1.4 miles north of State Highway 6 and 2.3 miles east of State Highway 35 near the boundary of Brazoria and Galveston counties in Galveston County, Texas (the "Plant").
2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and Viridis agree that the Commission has jurisdiction to enter this Agreed Order, and that Viridis is subject to the Commission's jurisdiction.
4. Viridis received notice of the violations alleged in Section II ("Allegations") on or about July 22, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Viridis of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Four Thousand Three Hundred Eighty-Seven Dollars (\$4,387) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Viridis has paid Three Thousand Five Hundred Ten Dollars (\$3,510) of the



administrative penalty and Eight Hundred Seventy-Seven Dollars (\$877) is deferred contingent upon Viridis' timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If Viridis fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Viridis to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Viridis have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that Viridis reported the deviation regarding fuel flow meters on internal combustion engines in the deviation report dated March 27, 2007.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Viridis has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

As owner and operator of the Plant, Viridis is alleged to have:

1. Failed to install totalizing fuel flow meters with an accuracy of  $\pm 5\%$  on four internal combustion engines to individually and continuously measure the gas and liquid fuel usage in order to demonstrate continuous compliance with the control requirements for nitrogen oxides ("NOx") in the Houston-Galveston-Brazoria Ozone Nonattainment Area, in violation of 30 TEX. ADMIN. CODE §§ 117.340(a) and 117.9020(2)(A)(i) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on June 5, 2007.
2. Failed to report deviations regarding fuel flow meters on internal combustion engines, which should have been included in the deviation report for the period ending September 6, 2005, in violation of 30 TEX. ADMIN. CODE § 122.145(2)(A), TEX. HEALTH & SAFETY CODE § 382.085(b), and Air Permit No. 02538, General Conditions, as documented during an investigation conducted on June 5, 2007.



### III. DENIALS

Viridis generally denies each allegation in Section II ("Allegations").

### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Viridis pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Viridis' compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Viridis Energy (Texas), LP, Docket No. 2007-1292-AIR-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. It is further ordered that Viridis shall undertake the following technical requirements:
  - a. Within 270 days after the effective date of this Agreed Order, achieve compliance with the continuous demonstration of compliance requirements for combustion control at major industrial, commercial, and institutional sources in the Houston-Galveston-Brazoria Ozone Nonattainment Area, in accordance with 30 TEX. ADMIN. CODE § 117.340; and
  - b. Within 285 days after the effective date of this Agreed Order, submit written certification demonstrating compliance with Ordering Provision 2.a. The certification shall include detailed supporting documentation including receipts, monitoring records, and/or other records to demonstrate compliance, and be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:





Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Air Section, Manager  
Houston Regional Office  
Texas Commission on Environmental Quality  
5425 Polk Avenue, Suite H  
Houston, Texas 77023-1486

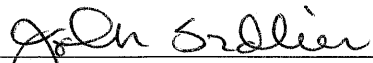
3. The provisions of this Agreed Order shall apply to and be binding upon Viridis. Viridis is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.
4. If Viridis fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Viridis' failure to comply is not a violation of this Agreed Order. Viridis shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Viridis shall notify the Executive Director within seven days after Viridis becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Viridis shall be made in writing to the Executive Director. Extensions are not effective until Viridis receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against Viridis in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Viridis, or three days after the date on which the Commission mails notice of the Order to Viridis, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.



## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

  
\_\_\_\_\_  
For the Executive Director

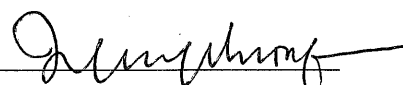
2/7/08  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

  
\_\_\_\_\_  
Signature

30 Nov 2007  
Date

LUONG NANYEN  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
Viridis Energy (Texas), LP

VICE PRESIDENT  
\_\_\_\_\_  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

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